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SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8C

HONG KONG

This is the summative (formal) assessment for Module 8C ***of this course and must be submitted by all candidates who*** selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 8C. ***In order to pass this module, you need to obtain a mark of 50% or more for this assessment.***

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

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- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
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- 6. The final submission date for this assessment is 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 7. Prior to being populated with your answers, this assessment consists of 8 pages.**

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph in yellow. Select only ONE answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Which of the following is / are among the jurisdictional criteria required to be satisfied for the Hong Kong court to make a bankruptcy order against an individual?

- (a) *The individual must hold a Hong Kong permanent identity card.*
- (b) *The individual must be ordinarily resident in Hong Kong at the date of the hearing of the petition.*
- (c) **The individual is domiciled in Hong Kong.**
- (d) *Any of the above.*

Commented [RD(DWH1): Correct (1 mark) – choices (a) and (b) do not appear in section 4 of the Bankruptcy Ordinance (Cap 6). Note that (b) would have been correct if it referred to the debtor being present in Hong Kong on the date of the petition.

Question 1.2

A receiver appointed pursuant to a charge created by a company (A) over its assets in favour of its lender (B) acts as:

- (a) **Agent of the company granting the charge (A, in this instance).**
- (b) *Agent of the lender appointing him (B, in this instance).*
- (c) *Agent of the Official Receiver.*
- (d) *An officer of the court.*

Commented [RD(DWH2): Correct (1 mark)

Question 1.3

Which of the following is a correct statement as to the core requirements which need to be satisfied before the Hong Kong court will wind-up a foreign company:

- (a) *All of the below apply.*

- (b) *At least one of the directors must be a Hong Kong resident.*
- (c) *The petitioning creditor must be a Hong Kong company or a Hong Kong resident.*
- (d) *There must be a reasonable possibility that the winding-up order would benefit those applying for it.*

Commented [RD(DWH3): Correct (1 mark) – there is no requirement for a director or the petitioner to be Hong Kong based

Question 1.4

A receiver is appointed over the entirety of a company's assets and the company goes into liquidation. Assuming the charge under which the receiver is appointed (and the receiver's appointment) cannot be challenged, realisations made by the receiver -

- (a) *must first be used to satisfy the costs and expenses of the liquidator.*
- (b) *must first be used to satisfy the whole of all claims by employees but no other claims.*
- (c) *must first be used to satisfy the claims of preferential creditors as described in the relevant section of Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) (CWUMPO).*
- (d) *will be kept entirely by the receiver for the benefit of the charge holder irrespective of what claims, preferential or otherwise, exist against the company.*

Commented [RD(DWH4): Correct (1 mark) – see text at 6.4.1 (sections 79, 265B(3) of CWUMPO)

Question 1.5

The date of commencement of liquidation for a compulsory liquidation is -

- (a) *the date on which a creditor serves a statutory demand.*
- (b) *the date on which the petition is presented.*
- (c) *the date of the winding-up order.*
- (d) *the date on which notice of the liquidator's appointment is advertised.*

Commented [RD(DWH5): Correct (1 mark) – section 184 CWUMPO

Question 1.6

In respect of a Hong Kong creditor's scheme of arrangement promoted by the company, the legislation provides:

- (a) *For a stay of all proceedings against the company pending the sanctioning of the scheme.*

- (b) For a stay of enforcement of any judgment against the company.
- (c) For a stay of all proceedings against the company if the statutory majorities are met at the creditors' meeting.
- (d) **None of above, as the scheme legislation provides for no stay.**

Commented [RD(DWH6): Correct (1 mark)]

Question 1.7

Select the correct answer as to whether the following statement is true or untrue:

Hong Kong legislation provides a comprehensive statutory regime relating to corporate rescue.

- (a) This statement is true because of the combined effect of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) and the Companies Ordinance (Cap 622).
- (b) This statement is true because of recent legislation called the Companies (Corporate Rescue) Bill.
- (c) **This statement is untrue, as Hong Kong has no comprehensive statutory regime for corporate rescue.**
- (d) This statement is true because of the recently enabled Cooperation Mechanism for cooperation in relation to insolvency matters as between Hong Kong and the Mainland, People's Republic of China.

Commented [RD(DWH7): Correct (1 mark)]

Question 1.8

Select the correct answer as to whether the following statement is true or untrue:

Since the Handover in 1997, no decisions of any United Kingdom (UK) court are binding in Hong Kong.

- (a) **This statement is untrue as decisions of the UK Privy Council on appeals from Hong Kong remain binding.**
- (b) This statement is true as all aspects of English law ceased on the Handover as otherwise this would be seen as conferring an advantage on the UK.
- (c) This statement is true as after the Handover only decisions of the Hong Kong court are allowed to be cited and relied upon.
- (d) This statement is true as although decisions from common law jurisdictions can be cited and may be persuasive, they are not binding.

Commented [RD(DWH8): Correct (1 mark) – The *China Field* decision confirmed that pre-1997 decisions of the Privy Council on appeals from Hong Kong were and remain binding (section 4.1 of text)

Question 1.9

After a liquidator is appointed in a creditors' voluntary liquidation, the powers of the directors of the company -

- (a) **cease completely, with no exceptions.**
- (b) **cease except so far as the committee of inspection or the creditors (if there is no committee) agree to any powers continuing.**
- (c) **continue and can be exercised provided the directors do so with creditors' interests in mind.**
- (d) **cease except so far as the liquidator agrees to any powers continuing.**

Commented [RD(DWH9)]: [B] Correct (1 mark) – see section 244 of CWUMPO

Question 1.10

The law as to cross-border insolvency in Hong Kong can be found in:

- (a) **The common law and Part X of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.**
- (b) **The UNCITRAL Model Law on Cross-Border Insolvency as adopted in Hong Kong.**
- (c) **Various bilateral protocols with other common law jurisdictions.**
- (d) **The Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319).**

Commented [RD(DWH10)]: [A] Correct (1 mark) – Hong Kong has not adopted UNCITRAL, there are no relevant bilateral treaties with other common law jurisdictions, and Cap 319 deals with enforcement of judgments, not cross-border insolvency

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 3 marks]

Commented [RD(DWH11)]: (3 marks)

To whom does a receiver (appointed pursuant to a charge) owe duties when selling the asset charged? Please provide an outline only.

When selling a charged asset, a receiver appointed pursuant to a charge owes her duties to the charge-holder or debenture-holder, rather than to the company whose assets she is selling (even if her conduct is disadvantageous to the company). This is notwithstanding the fact that the receiver will act as agent of the company.

The receiver has a duty (which is the same as a mortgagee's duty) when selling the asset to act in accordance with the powers conferred upon her by the charge/debenture and to act in good faith.

Finally, the receiver is subject to an overriding duty to act with reasonable care and skill, and in the event that this duty is breached, she will be liable to the company for losses arising.

Question 2.2 [maximum 3 marks]

In a compulsory liquidation, what elements must a liquidator satisfy in order to successfully demonstrate a transaction (with a non-associate) amounted to an unfair preference? Please provide an outline only.

The liquidator must show all of the following elements to successfully prove that a transaction amounted to an unfair preference under s 266 CWUMPO:

- 1. The transaction occurred within 6 months before the commencement of the winding up, and was a relevant transaction (this will include payments as well as the grant of security);*
- 2. As a result of the transaction, the relevant creditor is placed in a better position than it otherwise would have been on liquidation;*
- 3. At the time when the preferential transaction was made, either (i) the company was unable to pay its debts, or (ii) the company became unable to pay its debts as a result of the transaction; and*
- 4. In making the relevant payment/granting the relevant security, etc. the company was "influenced by a desire" to improve the relevant creditor's position when compared to a liquidation scenario.*

Question 2.3 [maximum 4 marks]

What are the key elements needed for a Hong Kong liquidator to make use of the mechanism for co-operation between Hong Kong and the Mainland? Please provide an outline only.

In order to make use of the new co-operation mechanism between Hong Kong and the Mainland, the Record of meeting and Supreme Court opinion require that:

- 1. The proceedings must fall within the definition of Hong Kong Insolvency Proceedings, so must be a collective proceeding under CWUMPO or the CO (e.g. a scheme of arrangement promoted by the liquidator or provisional liquidator, a CVL, or a compulsory liquidation);*
- 2. The company's COMI must be within Hong Kong (with the opinion specifying that COMI will usually be determined with reference to the company's place of incorporation, but that the Court may also take account of the principal office, principal place of business and/or principal location of assets in making this determination);*
- 3. The Hong Kong Court must provide a letter of request; and*

Commented [RD(DWH12)]: (3 marks)

A good, clear, answer. Could also have added that the 'preferred' party must be a creditor or a guarantor

Commented [RD(DWH13)]: (3.5 marks)

Full marks if had mentioned that the COMI must have been in Hong Kong for at least 6 months

4. *The company's principal mainland assets, place of business or representative office must be within one of the pilot regions, being the Shanghai, Xiamen and Shenzhen Municipalities.*

QUESTION 3 (essay-type question) [15 marks]

Question 3.1 [maximum 4 marks]

Commented [RD(DWH14)]: (4 marks)
Good answer

Discuss the statutory basis enabling the Hong Kong court's jurisdiction to wind-up a non-Hong Kong company, and the common law principles that the Hong Kong court will consider when deciding whether to exercise that jurisdiction.

Part X of CWUMPO deals with the winding up of "unregistered companies", which term includes (pursuant to s326 of CWUMPO) companies registered outside of Hong Kong. The Hong Kong Court can wind up a foreign company where it is unable to pay its debts, where it has been dissolved or ceased to carry on its business (or is continuing only to wind down its affairs) or where it is just and equitable for the foreign company to be wound up.

*When considering whether to exercise this jurisdiction, the Hong Kong Court will take into account the "three core requirements" as set out in the *Yung Kee* decision. These requirements are:*

- 1. A "sufficient connection" between the company and Hong Kong;*
- 2. That there is a "reasonable possibility" that the winding up order sought, if granted, would benefit the petitioner/applicant; and*
- 3. That the Court is able to exercise jurisdiction over at least one person "interested in the distribution of the company's assets".*

Taking each in turn:

- 1. A sufficient connection can be by way of assets in the jurisdiction, including a listing on the Hong Kong Stock Exchange (but only where it can be shown that there is a real prospect of meaningful value being obtained from realising that listing), or by some other "link of genuine substance" such as the company conducting business in Hong Kong or, more recently, other COMI factors.*
- 2. The second requirement turns on benefit to the petitioner, and is usually met by showing that there are realisable assets in Hong Kong, the realisation of which will produce a return for that petitioner. This requirement cannot be dispensed with, although there is a low threshold of proof in relation to it. Whilst previously assets in the Mainland were held to be insufficient, it has not yet been established how such assets will be treated following the implementation of the new co-operation measures between the Mainland and Hong Kong.*

3. *The final requirement is usually met by showing that there is a non-petitioner creditor which is subject to the jurisdiction of the Hong Kong Court, or that the petitioner itself is so subject (but not merely as a result of having submitted the petition - there must be "something more"). The Court may, in circumstances where the other two requirements are very strong, dispense with this requirement.*

Question 3.2 [maximum 5 marks]

The scheme of arrangement is, in essence, Hong Kong's only statutory tool for corporate rescue. Describe it, listing the pros and cons.

A scheme of arrangement is a statutory mechanism (provided for in ss. 668 - 677 of the CO) by which a company can make binding arrangements with its creditors or members through the use of majority-voting mechanisms (i.e. rather than requiring every single member or creditor to consent to whatever is proposed as would be the case for an ordinary contractual variation, for example). This ability to "cram down" non-consenting minority creditors/members is a major advantage of a scheme.

In the restructuring context, a scheme is often used to alter, reduce or otherwise vary a company's debt burden with the aim of providing the company a means to trade out of a situation which may otherwise be unsustainable. However, a scheme (by itself) does not provide any sort of moratorium or stay. This is a major disadvantage of a scheme. That said, a stay is often in practice accomplished either by making an application under the Court's case management powers, or by promoting the scheme within the wrapper of a provisional liquidation (which gives rise to an automatic stay).

A scheme takes place by way of a three-stage process as follows:

- 1. First, the company, a creditor or member makes an *ex parte* application for permission to convene a "scheme meeting" (being a meeting at which the creditors and/or members will consider and vote on the terms of the proposed scheme);*
- 2. Second, the scheme meeting will take place; and*
- 3. Third, if the scheme is approved at the scheme meeting, the company/creditor will apply to the Court for the sanction of the scheme.*

If approved and sanctioned, the scheme will become binding upon all creditors (regardless of their vote) upon registration by the Registrar of Companies. However, the Gibbs principle has been applied by Hong Kong courts to the effect that a debt may only be extinguished under its proper law, so a scheme will only have practical effect on Hong Kong governed debt, debt which is sought to be enforced in Hong Kong or debt where the creditor participated in the scheme process.

Question 3.3 [maximum 6 marks]

Commented [RD(DWH15)]: (3.5 marks)

Good but the answer should also refer to : the role of the explanatory statement; how classes are constituted; the statutory majorities needed; the court's role on sanction

Commented [RD(DWH16)]: (5.5 marks)

A good answer - but see note below as to important restriction

With no legislation to deal with cross-border insolvencies, how has the common law developed to assist foreign liquidations where steps need to be taken in Hong Kong? What are the pros and cons of developing the law in this way?

The lack of legislative framework to address cross-border insolvencies, coupled with the Hong Kong Court's desire (based on comity) to assist foreign-Court-appointed officeholders has means that that the Hong Kong Courts have applied a modified universalist approach to the common law mechanisms available.

*In the Hong Kong case of *A Co v B*, the Court found that a letter of request from a foreign Court in a commonwealth jurisdiction with similar substantive insolvency legislation would allow the Hong Kong Court (in suitable circumstances) to grant orders akin to those that would be available to an officeholder appointed under the Hong Kong legislation. While a letter of request may not on the strict interpretation of the common law be required, Hong Kong practice has developed to require that a letter be presented prior to any relief being granted on this basis.*

*In addition to the *A Co v B* case, the Privy Council decision in *Singularis v PricewaterhouseCoopers* cemented the so-called *Singularis Principle*, of an assisting jurisdiction (i.e. a universalist approach whereby the COMI or state of incorporation insolvency proceeding remains the main proceeding, while the foreign jurisdiction, being in this instance Hong Kong, provides assistance to that main proceeding rather than a parallel main proceeding).*

One of the major advantages of common law is that it is flexible and able to be developed by the Courts to meet the needs to particular societal developments. However, a disadvantage is that it is more uncertain, as a result of this potential for change.

*The Hong Kong Court has recently developed its approach to the recognition of foreign officeholders and foreign proceedings under common law, for example in the *Up Energy* case. In that decision, a creditor of a Bermuda-incorporated, Hong Kong-listed company being wound up in Bermuda applied for a winding up order in Hong Kong. This was opposed by the Bermuda liquidators on the basis that there was already an extant liquidation proceeding and, to the extent assistance in Hong Kong was required, it could be obtained by means of a recognition order (i.e. that Bermuda would be the main liquidation and Hong Kong would fill the role of the assisting jurisdiction under the *Singularis Principle*). This was rejected, and the Hong Kong Court granted a separate winding up order in respect of the company under CWUMPO. In the decision the Court commented on the fact that it was unable to grant powers to liquidators that they did not already possess as a result of the domestic regime.*

*The Court has also developed a focus, in the context of the primary or main proceeding under the *Singularis Principle*, on the Company's COMI as opposed to its place of incorporation (as was previously the position)*

Commented [RD(DWH17)]: Should add how the *Singularis* principle restricts how the HK court may assist

QUESTION 4 (fact-based application-type question) [15 marks]

Question 4.1 [maximum 4 marks]

You are instructed by the liquidator of Palm Beach Limited, a Hong Kong company in compulsory liquidation. Your client tells you that the company granted a floating charge to a creditor, Sea Breeze Incorporated, a few months before the liquidation. Sea Breeze has appointed a receiver. The liquidator wants to know if any of the receiver's realisations can be used to meet the liquidation costs or pay any unsecured creditors. Outline the discussion you would have with the liquidator.

Before proceeding to a discussion about realisations, it will be necessary to consider with the liquidator the circumstances in which the Sea Breeze security was granted. This is because the grant of security took place "a few months before the liquidation": if this was within 6 months of commencement (or, if Sea Breeze is an associate of Palm Beach, within 2 years), there is the potential for the grant of security to be unwound as an unfair preference. Similarly, a floating charge will be void if granted within the two years (or 1 year, if Sea Breeze is unconnected to Palm Beach) before the commencement of the liquidation unless it can be shown that it was for "new money provided". In the event that Sea Breeze and Palm Beach are not connected entities, it will also be necessary to establish whether Palm Beach was unable, or became unable as a result of the Sea Breeze transaction, to pay its debts.

Assuming however that the security was validly granted, I would advise the liquidator as follows:

- 1. As a general principle, the assets over which the receiver is appointed are not available for use by the liquidator.*
- 2. As such, the liquidator would not be able to take his/her fees from any realisations made by the receiver.*
- 3. However, in the event that Palm Beach has preferential creditors (e.g. certain employee claims), the realisations of the receiver may be used to satisfy the claims of those preferential creditors, as a result of a statutory exception to the general principle stated at 1 above. This provision applies where there are insufficient uncharged assets in the liquidation estate to meet the claims of those creditors. As such, it will be essential to understand the other assets within the estate (if any, given it was a floating charge) and the quantum of any preferential claims, to determine whether this exception applies.*
- 4. If the receiver was appointed soon before, or after the appointment of the liquidator, then it may well be the case that the floating charge crystallised over all of the current assets of Palm Beach and as such there are no un-charged assets in the estate (since crystallisation occurs upon the appointment of the receiver). This would mean that the statutory exception would apply to any preferential claims since there are no un-charged assets from which to meet the preferential claims, so the claims will require to be met out of the receiver's realisations.*

Commented [RD(DWH18)]: (3 marks)

A good answer but misses one point: Also, should identify whether required registration and if so, whether was in fact properly registered. Otherwise the charge would not bind the liquidator.

Commented [RD(DWH19)]: Yes, but should say what the test is for that

Commented [RD(DWH20)]: The time of appointment would not be relevant, but the terms of what is covered

Question 4.2 [maximum 6 marks]

Soaring Kite Limited (SKL) is a Cayman incorporated company that is listed on the Hong Kong Stock Exchange, and has assets and a representative office in Shenzhen. It is in insolvent liquidation in Cayman. The liquidator appointed in Cayman (L) tells you he wants to obtain documents from SKL's bank in Hong Kong and he also wants obtain orders to examine the auditors who are in Hong Kong and who will not cooperate with his investigations. L says he has heard that it is straightforward to get a "standard order" from the Hong Kong court recognising his appointment and giving him a full suite of powers in Hong Kong including a stay of any actions that any creditor of SKL may bring in Hong Kong. Outline the advice you would give to L.

Although a "standard order" was previously common-place, the Court is more reluctant to grant these orders now. The expectation here was that a foreign-appointed liquidator such as L could obtain a letter of request from the Court which appointed them (in this case, the Cayman Court) and would then obtain a recognition order granting a full suite of powers to L, enabling him to undertake various tasks in Hong Kong. However, these orders are now less common as the Court has, following the *RSM Nelson Wheeler* case, adopted a stricter approach. In that case, a Cayman provisional liquidator obtained a "standard order" and thereafter issued summons seeking documents from a Hong Kong auditor, as L proposes to do. However, the Court declined to grant the relief, noting that a company for the purposes of s286B CWUMPO (being the section conferring the power to obtain information or an examination) does not include a foreign company so the provisional liquidator could not utilise that section.

In addition, the Court in *RSM Nelson Wheeler* noted that any powers granted by the Hong Kong Court to a foreign office-holder would be limited by any limits which applied to the office-holder's appointment in the foreign court. Given the limited scope of the power to examine and call for documents in Cayman, L would not be able to make use of the full broad examination powers under CWUMPO even if he were successful in obtaining an order.

Notwithstanding that a "standard order" is less common now, L is still able to apply to the Hong Kong Court in one of the two scenarios listed in the *Global Brands* decision. These are (i) limited recognition of L's power to act on behalf of SKL (given that he is appointed in Cayman, where the company is incorporated), or (ii) "limited and carefully prescribed" assistance to him as a matter of practicality.

The *Global Brands* decision concerned the right of a liquidator to act on behalf of the company with its bank. The Court allowed the liquidator to so act, so L should be able relying on that precedent to be recognised as the agent/representative of SKL for purposes of dealing with the bank to obtain the documents. In addition, it may be

Commented [RD(DWH21)]: (3 marks)

Again, misses a few points, e.g. requirement for COMI connection per *Global Brands*

Also: note the reference to presence in Shenzhen. Shenzhen is a pilot area under the Hong Kong / Mainland cooperation mechanism. That mechanism is only open to Hong Kong appointed office-holders. If core requirements can be met may therefore be better to get winding-up order in Hong Kong. Identify the core requirements

Does not deal with client's question about a stay

Commented [RD(DWH22)]: Better to reference the Singularis principle for this proposition

Commented [RD(DWH23)]: Note, however, that the Bay Capital case determines that should not need an order for company's own account

possible for L to seek assistance from the Hong Kong Court to give effect to the powers he enjoys as a matter of Cayman law to call for the examination of the auditors.

Question 4.3 [maximum 5 marks]

Harrier Limited supplies software products to Lapwing Limited pursuant to an ongoing contract signed between the two. Lapwing has stopped paying Harrier's invoices. It has not made any complaint about the supplies but in a conversation a Lapwing director told a Harrier director "sorry, we just can't afford it right now". The Harrier director said he may therefore have no option but to wind-up Lapwing, to which the Lapwing director replied "try that and I'll fight it" but he does not say on what grounds. Harrier come to you and ask you to talk them through the issues. What key questions do you need to ask and what comments can you give?

The key questions we will need to understand in this scenario is where Lapwing is incorporated and has its COMI (so, where its directors, officers and board meetings take place, where its operations, books, records, assets and bank accounts are, and where any restructuring activities have taken place). This will enable us to determine where the likely seat of the winding up proceeding (or at least the main one) will be.

In addition (and assuming it will be a Hong Kong liquidation), we will need to understand the governing law of the contract and its terms, in particular whether there is any arbitration clause as this can be used to oppose the granting of a petition. Previously, this would have been less of a concern; however, it should be noted in that regard that the recent case law is unsettled and there has been a swing towards a pro-arbitration approach (i.e. the Courts showing a willingness to allow opposition on the basis of an arbitration clause even where there is no necessarily a real dispute between the parties).

We will also need to understand any other basis for opposition that Lapwing may have, such as defective goods being supplied by Harrier, although this seems unlikely given that the Lapwing director has noted that the company simply cannot afford to make the Harrier payments any longer.

Assuming that Lapwing does have credible grounds to oppose the winding up petition, it would be able to apply for an injunction preventing Harrier from proceeding with the winding up petition.

* End of Assessment *

TOTAL MARKS: 40.5 OUT OF 50

Commented [RD(DWH24): (2 marks)

Some good points, but does not follow through on advice needed to be given. For example:

Harrier needs to know that if winds up then is treated same as other creditors

Statutory demand procedure – prescribed form needed for example.

Re ability to wind up if 'otherwise satisfied' company insolvent: statement "cannot pay" is offset by the statement "will fight it" – evidence (hence Stat Demand advisable)

Discretion not to wind up if, for example, Lapwing is undergoing a genuine restructuring

Commented [RD(DWH25): Or, if core requirements are met, that HK court may wind up

Commented [RD(DWH26): Same for exclusive jurisdiction clause